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THIRD UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES
Geneva, 13 November 1995
Item 8 of the provisional agenda

DECLARATION AND PROTOCOL DECISION OF THE INTERSTATE COUNCIL FOR ANTI-MONOPOLY POLICIES OF THE COMMONWEALTH OF INDEPENDENT STATES (CIS) AND THE COMMISSION FOR THE PROTECTION OF COMPETITION OF THE REPUBLIC OF BULGARIA

(KISHINEV, REPUBLIC OF MOLDOVA, 7 NOVEMBER 1995)

Note by the UNCTAD secretariat

During the fifth session of the Interstate Council for Anti-monopoly Policies of the Commonwealth of Independent States (CIS), held in Kishinev, Republic of Moldova, from 6 to 7 November 1995, the representatives of the anti-monopoly bodies of the CIS member countries, jointly with the Commission for the Protection of Competition of the Republic of Bulgaria, adopted the attached Declaration and Protocol Decision, which are made available for the information of the delegations to the Conference.

GE.95-53750 (E)

DECLARATION

Under provision 8 of section E of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, States with greater expertise in the operation of systems for the control of restrictive business practices should, on request, share their experience with, or otherwise provide technical assistance to, other States wishing to develop or improve such systems.

Accordingly, taking into account the fact that the CIS countries and Bulgaria have not thus far received assistance in the development of competition from UNCTAD, and also emphasizing the importance of bringing about the harmonization of the national laws of these countries, the representatives of the anti-monopoly bodies of the CIS countries (Armenia, Belarus, Georgia, Kazakstan, Kyrgyzstan, Republic of Moldova, Russian Federation and Ukraine) and Bulgaria request the Third Review Conference on restrictive business practices to consider the question of providing substantial technical assistance in the area of competition to the CIS countries and Bulgaria, and in particular, as a first step, the financing of the technical cooperation project "Development and protection of free competition in the Commonwealth of Independent States" being submitted to the UNCTAD secretariat.

For the Directorate for State Market Regulation, Ministry of Economy, Republic of Armenia:
Head of Directorate — M.V. Mikaelyan

For the Ministry for Anti-Monopoly Policy, Republic of Belarus:
Minister — I.A. Lyakh

For the Main Directorate for Anti-Monopoly Policy, Ministry of Economy, Republic of Georgia:
Deputy Head — S.S. Fetelava

For the State Committee on Price and Anti-Monopoly Policy, Republic of Kazakstan:
Chairman — P.V. Svoik

For the State Department for Anti-Monopoly Policy, Ministry of Economy, Kyrgyz Republic:
Acting Director — S.K. Nasiza

For the Department for Anti-Monopoly Policy and Market Infrastructure, Ministry of Economy, Republic of Moldova:
Director — V.N. Geletsky

For the State Committee on Anti-Monopoly Policy and Support for New Economic Structures, Russian Federation:
Chairman — L.A. Bochin

For the Anti-Monopoly Committee, Ukraine:
State Commissioner

V.D. Pyatkovsky

For the Commission for the Protection of Competition, Republic of Bulgaria:
Chairman

S. Neshev

PROTOCOL DECISION

The representatives of the anti-monopoly bodies of the CIS countries (Armenia, Belarus, Georgia, Kazakstan, Kyrgyzstan, Republic of Moldova, Russian Federation and Ukraine) and Bulgaria, having heard a report from the representative of the State Committee on Anti-Monopoly Policy of the Russian Federation concerning the forthcoming Third Review Conference on restrictive business practices (Geneva, 13-21 November 1995), decided to:

1. Take note of the information concerning the forthcoming Conference;

2. Concur with the proposed conclusions regarding substantive items on the Conference agenda;

3. Instruct the State Committee on Anti-Monopoly Policy of the Russian Federation and the State Committee on Price and Anti-Monopoly Policy of the Republic of Kazakstan to present the common position of the CIS countries and Bulgaria, including questions relating to technical assistance, at the Third Review Conference.

For the Directorate for State Market Regulation, Ministry of Economy, Republic of Armenia:
Head of Directorate — M.V. Mikaelyan

For the Ministry for Anti-Monopoly Policy, Republic of Belarus:
Minister — I.A. Lyakh

For the Main Directorate for Anti-Monopoly Policy, Ministry of Economy, Republic of Georgia:
Deputy Head — S.S. Petelava

For the State Committee on Price and Anti-Monopoly Policy, Republic of Kazakstan:
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Director — V.N. Geletsky

For the State Committee on Anti-Monopoly Policy and Support for New Economic Structures, Russian Federation:
Chairman — L.A. Bochin

For the Anti-Monopoly Committee, Ukraine:
State Commissioner — V.D. Pyatkovsky

For the Commission for the Protection of Competition, Republic of Bulgaria:
Chairman — S. Neshev

Annex

to the Protocol Decision of the fifth session of the Inter-State Council for Anti-Monopoly Policies of the CIS countries (6-7 November 1995)

Proposals by the CIS countries under item 8 of the Conference agenda

Item 8 (a) - Review of 15 years of application and implementation of the Set:

Give a positive assessment of the study prepared by the UNCTAD secretariat on this matter, noting the comprehensive analysis relating to the main provisions of the Set (TD/RBP/CONF.4/5).

Inform the Conference participants of changes made in the competition legislation of the CIS countries.

Give a critical assessment of the practical application of the Set, drawing attention to the incomplete observance of some of its provisions, such as on refraining from agreements coordinating export and import prices (provision D.3 (a)); application of the agreed principles to the activities of transnational corporations (provision B.4); and implementation within UNCTAD of comprehensive activities relating to technical assistance, advisory and training programmes (provision F.6).

Note that, notwithstanding the main task of the Set to eliminate restrictive business practices in international transactions, the practical work of sessions of the Intergovernmental Group of Experts on Restrictive Business Practices has been confined to an exchange of experience in the field of national regulation.

Item 8 (b)

("Agreed conclusions"):

Support the conclusion that there is a need to enhance the effectiveness of technical assistance provided within the framework of UNCTAD. Emphasize, in this connection, the importance of the task of coordination in respect of not only donors but of recipients. Describe the technical assistance project prepared at the request of the CIS countries and note the importance of the successful implementation of this project for the development of a market economy in the former Soviet republics. Note the advantages of providing technical assistance at the regional level, inter alia, in connection with identifying common problems. Express the wish for UNCTAD to have a more active role in ensuring the financing and implementation of technical assistance programmes.

Support the idea of entrusting UNCTAD to carry out work to identify similarities in anti-monopoly legislation and strengthen collaboration in areas where convergence is difficult to achieve. Emphasize that questions of convergence in areas such as those referred to in the "agreed conclusions" as vertical constraints, abuse of a dominant position of market power, protection of intellectual property rights and enforcement of laws are of particular interest to the Russian Federation and the CIS as a whole.

Note the particular importance of annotating and widely disseminating the Model Law on competition prepared within UNCTAD. Express the view that it would be appropriate for the secretariat to make a comparative analysis of the rules of the Model Law and the present legislation of countries in transition, identifying any differences and areas for possible harmonization.

Support the proposal to hold one- or two-day informal exchanges of views in the future within the framework of Intergovernmental Group of Experts sessions. Emphasize that the topics for such meetings should be decided upon at the preceding session of the Group and should focus on quite narrowly defined aspects with a view to ensuring a "professional dialogue".

Support the proposal to consider, at the Group's regular sessions, the question of improving the implementation of the Set, as well as the questions of national, regional and international systems for the regulation of competition, and the identification of restrictive business practices in international transactions.

Draw particular attention to the conclusion that ways and means must be found to ensure the participation of all interested sides in UNCTAD activities. Note that, because of considerable financial difficulties, many CIS countries are unable to participate in UNCTAD activities in the area of competition.

("Non-agreed conclusions")

(Conclusions on which consensus was not reached at the fourteenth session of the Intergovernmental Group of Experts on Restrictive Business Practices)

In this regard:

(a) Support the idea of holding a Fourth Review Conference in the year 2000 with a view to further development of the scheme of multilateral cooperation on competition issues which has been established within the United Nations system and has proven its value;

(b) Support the proposal to change the title of the Intergovernmental Group of Experts on Restrictive Business Practices to that of Intergovernmental Group of Experts on Competition;

(c) On the question of removing exemptions in respect of export cartels from national anti-monopoly legislation: while in general sharing the position concerning the adverse effects of export cartels on the development of international trade, note that the removal of such exemptions from national legislation will make sense only if corresponding steps are taken by all participating countries;

(e) Support the proposal to study the economic benefits, including benefits for consumers, of competition policies.

(d), (f) - (j)

Support the proposals to undertake an analysis of matters relevant to the issue of the efficiency of, and ways of further developing, the existing

multilateral system of control of restrictive business practices, and in particular to:

- Charge the UNCTAD secretariat with carrying out such a study;
- Consider thereafter the question of the appropriateness of elaborating a multilateral agreement on the trade-related aspects of competition, its legal status and content;
- Consider the "adequacy" of the existing Set for the standpoint of the effective control of restrictive business practices in international deals, including proposals for it to be revised or supplemented;
- Decide on the question of the compatibility of international competition rules and international trade rules.

* * *

In the consideration of possible future changes to the Set, propose that it be broadened to include provisions concerning the activities of the State (State monopolies, State-owned enterprises, enterprises with exclusive rights, State subsidies, regulation of natural monopolies).

Recommend that Intergovernmental Group of Experts sessions should not only consider matters of national regulation but also elaborate common approaches to avoiding restrictive business practices in international deals.

Considering the fact that the Intergovernmental Group of Experts is at present the only institutional mechanism in the area of international regulation of competition, emphasize the urgent need to increase the financial and human resources of the Group's secretariat.